

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

MATTHEW A. MCKINSTRY, and  
MELISSA C. RICHARDSON,

NO. 2:18-CV-0363-TOR

## Plaintiffs,

## ORDER DISMISSING COMPLAINT

V.

PRIVATE NATIONAL MORTGAGE  
ACCEPTANCE COMPANY, LLC, et  
al.,

## Defendants.

BEFORE THE COURT is Plaintiffs' Complaint (ECF No. 1). The Court

has reviewed the record and files herein, and is fully informed. For the reasons

discussed below, all claims asserted in Plaintiffs' Complaint (ECF No. 2) are

**DISMISSED without prejudice and without leave to amend.**

## BACKGROUND

Plaintiffs Matthew A. McKinstry and Melissa C. Richardson, proceeding

*pro se* and *in forma pauperis*, bring suit against Private National Mortgage

1 Acceptance Company, LLC, “Malcolm \* Cisneros, ALC (A Law Corporation),”  
2 the State of Oregon, Linn County District Attorney, and “Doe 1-100 as amended.”  
3 ECF No. 1-3. After reviewing the Complaint in the light most favorable to  
4 Plaintiffs, the Court finds that Plaintiffs have failed to state facts which “plausibly  
5 give rise to an entitlement to relief.” *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009).

## 6 **PLAINTIFF’S ALLEGATIONS**

7 The facts according to Plaintiffs’ Complaint and various attachments are as  
8 follows. On December 10, 2014, Plaintiff Richardson executed a negotiable  
9 promissory Note in the amount of \$179,900.00 for the commonly known property  
10 of 3127 Geary St. SE, Albany, Oregon 97322. ECF No. 1-1 at 76. The Lender,  
11 Mortgage Research Center, LLC dba Veterans United Home Loans, a Missouri  
12 Limited Liability Company, purportedly originated the loan. *Id.* That same day,  
13 Plaintiffs executed a security interest in the form of a Deed of Trust in the amount  
14 of \$179,900.00 for the property described above. *Id.* The security instrument was  
15 filed in the Official Records of the Office of the Recorder of Linn County, Oregon,  
16 on December 11, 2014. *Id.* at 77. According to a mortgage statement dated May  
17 16, 2017, PennyMac Loan Services, LLC (“PennyMac”) is the servicer of the loan.  
18 *Id.* at 65.

19 According to the most recent mortgage statement provided to the Court,  
20 Plaintiffs’ loan became delinquent on July 1, 2015. ECF No. 1-11 at 1. On March

1 15, 2017, PennyMac filed a complaint in Linn County Circuit Court seeking  
2 judicial foreclosure of the property at issue pursuant to ORS 93.740. ECF No. 1-1  
3 at 72-73. Based on Plaintiffs' Complaint and attachments, the Court is unable to  
4 determine the current status of the foreclosure proceedings. However, in a letter  
5 addressed to the U.S. Department of Veterans Affairs, dated July 10, 2018,  
6 Plaintiffs alleged that the foreclosure action had "already gone to Oregon State  
7 court in which PennyMac was unsuccessful in their attempts to foreclose on the  
8 property." ECF No. 1-7 at 1.

9 On June 14, 2018, Plaintiffs sent PennyMac a Cease and Desist letter  
10 demanding that PennyMac cease its "efforts to foreclose on and sell the property"  
11 at issue. ECF No. 1-8 at 2. After PennyMac failed to respond to the letter,  
12 Plaintiffs initiated this lawsuit. ECF No. 1-7 at 2. Plaintiffs assert that PennyMac  
13 "is attempting to fraudulently collect, foreclose, and re-sell a mortgage." *Id.* at 1.  
14 Specifically, Plaintiffs allege that the Deed of Trust and the promissory Note have  
15 been separated and, therefore, "foreclosure legally cannot occur." ECF Nos. 1-8 at  
16 5; 1-1 at 75-80. As an additional ground for contesting the foreclosure, Plaintiffs  
17 appear to argue that Oregon State courts also lack jurisdiction over the foreclosure  
18 proceedings because the property at issue is owned by an individual member of a  
19 federally recognized tribe. ECF No. 1-2 at 1.

The Court liberally construes Plaintiffs' Complaint as an action for wrongful foreclosure. Plaintiffs seek injunctive relief, presumably to stop the foreclosure proceedings, as well as monetary damages in an undetermined amount. ECF No. 1 at 7.

## DISCUSSION

Under the Prison Litigation Reform Act of 1995, the Court is required to screen a complaint filed by a party seeking to proceed *in forma pauperis*. 28 U.S.C. § 1915(e); *see also Calhoun v. Stahl*, 254 F.3d 845, 845 (9th Cir. 2001) (noting that “the provisions of 28 U.S.C. § 1915(e)(2)(B) are not limited to prisoners”). Section 1915(e)(2) provides:

Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that (A) the allegation of poverty is untrue; or (B) the action or appeal (i) is frivolous or malicious; (ii) fails to state a claim on which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief.

28 U.S.C. § 1915(e)(2).

A claim is legally frivolous under § 1915(e)(2)(B)(i) when it lacks an arguable basis either in law or in fact. *Neitzke v. Williams*, 490 U.S. 319, 325 (1989), superseded by statute, 28 U.S.C. §1915(d), as recognized in *Lopez v. Smith*, 203 F.3d 1122, 1126 (9th Cir. 2000); *Franklin v. Murphy*, 745 F.2d 1221, 1227–28 (9th Cir. 1984). The Court may, therefore, dismiss a claim as frivolous

1 where it is based on an indisputably meritless legal theory or where the factual  
2 contentions are clearly baseless. *Neitzke*, 490 U.S. at 327. The critical inquiry is  
3 whether a constitutional claim has an arguable legal and factual basis. *See Jackson*  
4 *v. Arizona*, 885 F.2d 639, 640 (9th Cir. 1989), *superseded by statute*, 28 U.S.C. §  
5 1915(d), *as recognized in Lopez*, 203 F.3d at 1130–31; *Franklin*, 745 F.2d at 1227.

6 “The standard for determining whether a plaintiff has failed to state a claim  
7 upon which relief can be granted under § 1915(e)(2)(B)(ii) is the same as the  
8 Federal Rule of Civil Procedure 12(b)(6) standard for failure to state a claim.”

9 *Watison v. Carter*, 668 F.3d 1108, 1112 (9th Cir. 2012). Accordingly, “[d]ismissal  
10 is proper only if it is clear that the plaintiff cannot prove any set of facts in support  
11 of the claim that would entitle him to relief.” *Id.* “In making this determination,  
12 we take as true all allegations of material fact stated in the complaint and construes  
13 them in the light most favorable to the plaintiff.” *Id.* Mere legal conclusions,  
14 however, “are not entitled to the assumption of truth.” *Iqbal*, 556 U.S. at 679. The  
15 complaint must contain more than “a formulaic recitation of the elements of a  
16 cause of action.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). It must  
17 plead “enough facts to state a claim to relief that is plausible on its face.” *Id.* at  
18 570. The Court construes a *pro se* plaintiff’s pleadings liberally, affording the  
19 plaintiff the benefit of any doubt. *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir.  
20 2010) (quotations and citation omitted).

1                   **A. Subject Matter Jurisdiction**

2                   Because federal courts are courts of limited jurisdiction, it is a basic premise  
3 of federal court practice that a federal court must have jurisdiction over the subject  
4 matter of the action before it can act. *See Kokkonen v. Guardian Life Ins. Co. of*  
5 *Am.*, 511 U.S. 375, 377 (1994). Federal courts only have the power to hear cases  
6 as authorized by the Constitution or the laws of the United States, and are required  
7 to inquire into their jurisdiction at the earliest possible point in the proceeding. As  
8 noted, the Court liberally construes Plaintiffs' Complaint as an action for wrongful  
9 foreclosure. Significantly, the property at issue in this wrongful foreclosure action  
10 is located in Oregon. For reasons discussed below, the Court concludes that it  
11 lacks subject matter over Plaintiffs' claims under the local action doctrine.

12                  The local action doctrine "vests exclusive jurisdiction over specified types of  
13 actions involving real property in the forum where the property is located." *Eldee-*  
14 *K Rental Props., LLC v. DIRECTV, Inc.*, 748 F.3d 943, 946 (9th Cir. 2014); *see*  
15 *also United States v. Byrne*, 291 F.3d 1056, 1060 (9th Cir. 2002) ("The federal  
16 district courts' jurisdiction over actions concerning real property is generally  
17 coterminous with the states' political boundaries."). The Ninth Circuit has ruled  
18 that the local action doctrine is jurisdictional. *See Eldee-K Rental*, 748 F.3d at  
19 948-49.

1 To determine whether the local action doctrine precludes jurisdiction, courts  
2 consult the law of the forum state to determine whether a particular action is local  
3 or transitory. *Josevig-Kennecott Copper Co. v. James F. Howarth Co.*, 261 F. 567,  
4 569 (9th Cir. 1919) (“It is admitted that the question whether the action is local or  
5 transitory is to be determined by the law of the state.”). Here, under Washington  
6 or Oregon law, Plaintiffs’ action for wrongful foreclosure unquestionably qualifies  
7 as a local action. *See* RCW 4.12.010(1) (a plaintiff shall commence an action “for  
8 the foreclosure of a mortgage on, or for the determination of all questions affecting  
9 the title . . . to real property” “in the county in which the subject of the action . . . is  
10 situated.”); ORS 14.040(4) (a plaintiff shall commence “[s]uits for the foreclosure  
11 of a lien or mortgage upon real property” “in the county in which the subject of the  
12 action or suit . . . is situated.”). Although neither statute employs the term “local”  
13 or “transitory,” the actions described in the statutes must be brought in the county  
14 where the property is located, meaning the actions are “local.” *See Wash. State*  
15 *Bank v. Medalia Healthcare LLC*, 96 Wash. App. 547, 554 (1999); *State ex rel.*  
16 *U.S. Trust Co. v. Phillips*, 12 Wash. 2d 308, 314 (1942); *Dippold v. Cathlamet*  
17 *Timber Co.*, 98 Or. 183, 194 (1920).

18 Because it relates to the title or possession of their property, Plaintiffs’  
19 action for wrongful foreclosure falls within the scope of a local action under RCW  
20 4.12.010 or ORS 14.040. As such, Plaintiffs’ action must be brought in the Oregon

1 county where the property at issue is located. Accordingly, this Court lacks subject  
2 matter jurisdiction over Plaintiffs' claims and, therefore, dismisses Plaintiffs'  
3 Complaint without prejudice. Plaintiffs may reassert their claims in a competent  
4 court. *Frigard v. United States*, 862 F.3d 201, 204 (9th Cir. 1988). The Court will  
5 not express an opinion on whether subject matter jurisdiction is proper in state or  
6 federal court in Oregon.

7 **OPPORTUNITY TO AMEND**

8 Unless it is absolutely clear that amendment would be futile, a *pro se* litigant  
9 must be given the opportunity to amend his complaint to correct any deficiencies.  
10 *Noll v. Carlson*, 809 F.2d 1446, 1448 (9th Cir. 1987), *superseded by statute*, 28  
11 U.S.C. § 1915(e)(2), *as recognized in Aktar v. Mesa*, 698 F.3d 1202, 1212 (9th Cir.  
12 2012). Here, the Court has identified significant jurisdictional deficiencies in  
13 Plaintiffs' Complaint. Specifically, the Court lacks subject matter jurisdiction  
14 based on the local action doctrine because the property at issue is located in  
15 Oregon. At this time, the Court finds that it is absolutely clear that no amendment  
16 will cure the deficiencies in Plaintiffs' Complaint and granting Plaintiffs leave to  
17 amend would be futile. Therefore, the Court dismisses Plaintiffs' Complaint  
18 without leave to amend.

19 //

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## **REVOCATION OF IN FORMA PAUPERIS STATUS**

Pursuant to 28 U.S.C. § 1915(a)(3), “[a]n appeal may not be taken *in forma pauperis* if the trial court certifies in writing that it is not taken in good faith.” The good faith standard is an objective one, and good faith is demonstrated when an individual “seeks appellate review of any issue not frivolous.” *See Coppedge v. United States*, 369 U.S. 438, 445 (1962). For purposes of 28 U.S.C. § 1915, an appeal is frivolous if it lacks any arguable basis in law or fact. *Neitzke v. Williams*, 490 U.S. 319, 325 (1989).

The Court finds that any appeal of this Order would not be taken in good faith and would lack any arguable basis in law or fact. Accordingly, the Court hereby revokes Plaintiffs' *in forma pauperis* status.

If Plaintiffs seek to pursue this matter again in this district court or on appeal, they must pay the requisite filing fee.

**ACCORDINGLY, IT IS HEREBY ORDERED:**

1. The claims asserted in Plaintiffs' Complaint (ECF No. 1) are **DISMISSED without prejudice and without leave to amend here.**
2. Plaintiffs' *in forma pauperis* status is hereby **REVOKED**.
3. The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal of this Order would not be taken in good faith and would lack any arguable basis in law or fact.

1           4. Plaintiffs' Motion for Service of Process by U.S. Marshals Office (ECF

2           No. 9) is **DENIED as moot.**

3           The District Court Executive is directed to enter this Order and Judgment,  
4 forward copies to Plaintiffs, and **CLOSE** the file.

5           **DATED** March 13, 2019.



6           A handwritten signature in blue ink that reads "Thomas O. Rice".  
7           THOMAS O. RICE  
8           Chief United States District Judge